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C O N F I D E N T I A L SECTION 01 OF 04 NOUAKCHOTT 000266

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SUBJECT: CONSTITUTIONAL CONSIDERATIONS IN AZIZ'
TRANSITIONAL PLANS

REF: NOUAKCHOTT 222

Classified By: Charge d'Affaires Dennis Hankins for reasons 1.4 (b and d)

¶1. (C) Summary: Efforts to mediate a solution to the Mauritanian crisis continue. AU Commissioner for Security and Peace Ramdane Lamamra and Libyan Secretary of African Affairs Abdessalam Triky arrived in Nouakchott April 11 to discreetly continue the negotiations started by Senegalese Foreign Minister Cheikh Tidiane Gadio. Senate President Ba M'Bare said he would propose a solution in which General Aziz resigns, the High State Council is dissolved, and a new government of consensus holds elections within three months of its creation. He favors using the constitution as the only framework in negotiations and is confident the Constitutional Council will rule there's a power vacancy that can be legitimately filled by the President of the Senate. According to M'Bare, General Aziz would be willing to accept this compromise as long as he's allowed to run for president.

In his quest for a viable solution that will keep the military from lingering in power, M'Bare thinks some compromises are necessary. While stressing that he cannot rule on a question that has not been asked, Constitutional Council President Abdoullah Ould Ely Salem suggested that a constitutional ruling on a transition to the President of the Senate or even of Aziz' ability to run for office might not go in Aziz' favor; however, he noted the military has never paid much attention to the council and is not convinced that will change anytime soon. End summary.

THE WAY OUT?

¶2. (C) In a meeting April 12 with Charge and PolOff, President of the Senate Ba M'Bare, who -- according to statements by General Aziz -- will preside over the country once General Aziz steps down to run for president, said he is hopeful Lamamra and Triky's mediation efforts will bear fruit. (Note: According to M'Bare, the team was in Lemden talking to President Abdallahi in the morning and would meet with him afterwards. End note.) In principle, upon Aziz' resignation and the repeal of the High State Council's edict giving itself executive power, there will be a vacancy in the Presidency that, according to the constitution, is filled by

the President of the Senate who is obliged to organize new elections. M'Bare stated that General Aziz's position has changed as he would be willing to support the creation of a government of national consensus upon his resignation. In the exit plan outlined by M'Bare, this consensus government will hold elections within three months of its creation. (Note: If an agreement is reached, the June 6 election will be pushed back. End note.) When Charge asked about the fairness of elections planned by Walis, Hakems and a minister of the interior appointed by General Aziz, M'Bare responded that the national consensus government would have the power to make dismissals and appointments necessary to ensure election transparency, including Walis, Hakems and even the recently formed independent electoral commission (CENI). M'Bare said he would want to create a transition government along the lines of representation in the parliament (with the newly formed party in support of General Aziz and the fracturing of Ahmed Ould Daddah's RFD, that would give the majority of positions to pro-Aziz factions). M'bare suggested, but not with a great deal of credibility, that he would be able to get the FNDD and RFD to join this consensus government paving the way for elections that could be accepted by the international community.

13. (C) When asked by Charge whether he felt there would be a "presidential vacancy" upon Aziz' resignation, M'bare said that would have to be decided by the Constitutional Council -- saying he would want a ruling in order to assume the interim presidency. M'Bare sounded confident the Council would rule there was a vacancy given Abdallahi's absence from

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power for over eight months. For M'Bare, such a ruling would reestablish constitutional legitimacy. He stated that only the president, the president of the national assembly and the prime minister are allowed to bring this matter before the constitutional council. The Charge and M'Bare concurred that the President of the National Assembly would be the most appropriate person to make this request because he is the entity whose legitimacy is not in question. Note: In a previous conversation, FNDD's Ould Maouloud told Charge that if the Constitutional Council was consulted about the power vacancy, they would most likely deny such vacancy existed and that President Abdallahi remains the legitimate president. End note.

14. (C) When reminded by Charge about the U.S. position that calls for a re-establishment of constitutional order through President Abdallahi's return, even if only symbolically, M'Bare stated Abdallahi's return was almost impossible as the military would never accept it. He stated the mention of the president's return would only make the military hold on to power. He added that a decision by the Constitutional Council in favor of Abdallahi would be "very problematic."

15. (C) Regarding General Aziz's resignation, M'Bare stated that if the mediation was successful, Aziz would postpone his resignation but he did not specify until when. (Comment: Aziz announced his candidacy in the evening of April 12 and said he would resign at the end of the week to run for office. End comment.) Charge asked M'Bare if he thought Mauritania was bound by the African Charter on Elections, Democracy and Governance stating that military staging coups are ineligible to run in elections (Reftel). M'Bare responded "if I were you, I would not even go there." He thinks that if Aziz is not allowed to run, he will not let go of power. M'Bare believes this concession is necessary to ensure election transparency and the legitimacy of the next president. By M'Bare's response, it was clear he felt the Africa Charter did become the law of the land once adopted by the Parliament and signed by the President, even though the treaty itself has not entered into force at the international level.

16. (C) Charge asked if M'Bare knew what was planned for the High State Council (HSC) after Aziz' resignation -- noting

the rumor it was slated to remain in place in a "security coordination" role. M'Bare said he didn't know what Aziz planned, but added that a continuing HSC presence would be extra-constitutional. Ideally, the High State Council should be dissolved. Comment: In a press conference in Nouadhibou, General Aziz stated that the High State Council would remain in place to oversee all security matters and the government, which is being dissolved. It is unclear what was meant by that declaration. End comment.

17. (C) Charge asked whether M'Bare had any personal views on potentially becoming Mauritania's first black president. Initially dodging the question (since some accuse him of serving White Moor military interests as a traitor to black interests), M'Bare settled on saying his potential ascendancy "was not the way he would have preferred seeing a black man in charge.

18. (C) Comment: Perhaps with an eye to not going down in history as Mauritania's Marshal Petain, M'Bare made his best effort to present himself as trying to get his country out of an untenable situation where the two extremes around President Abdallahi and General Aziz are intent on maintaining the status quo which only hurts the Mauritanian people. By having the General cede power back to civilian rule, trying to form a consensus government, and probably pushing elections back a bit to allow for better preparation, he hopes to establish conditions that might be internationally acceptable -- even if Aziz ends up the elected president. He clearly recognizes his interim presidency is subject to the whims of General Aziz -- repeatedly noting that his ideas for the transition "were

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agreed to by the General" and worrying that anything that could derail Aziz' electoral ambitions would only "make him come back and rule as a dictator for thirty years." M'Bare is showing a bit more spark than when we last met him, finally having some talking points he can embrace, but he still portrays himself as bound by the military to only work at the margins to make the best of a bad situation.

THE CONSTITUTIONAL COUNCIL'S PERSPECTIVE

19. (C) Charge and PolOff met with Constitutional Council president Ely Salem to follow up on the question of whether the Council might be called upon to rule on a presidential vacancy. Salem noted that the current regime has yet to raise the question with the Constitutional Council. He thinks that if the military had really wanted to ask this question, they would have done so within the last nine months but noted he had seen the same press reports suggesting Aziz planned to vacate the executive and then follow the "constitutional" path of having the President of the Senate serve as an interim president through the elections. He noted the Council has a long history working with military regimes and, as a matter of practicality, does not intervene when the military seize executive power since, by definition, that act is anti-constitutional. Occasionally, the military has tried to do something ostensibly in the context of the constitution (Comment: for instance recent efforts to change the rules of the National Assembly to force Messaoud Ould Boulkheir's ouster from the presidency) that the Council routinely shoots down -- he noted the military never asks before they do something, and usually get it wrong.

110. (C) Comparing the 2005 coup d'etat with the current one, the president said that the situations were very similar. Both coup d'etats deposed democratically elected presidents. He said the difference in 2005 was that there was a consensus among Mauritanian political actors and that the international community accepted the transition calendar. In the 2005 to 2007 period, the military maintained its control of the executive right through the elections. If, in this case, the

military cedes executive control to civilian authority then the question of a "presidential vacancy" and the legitimacy of a transition government under the President of the Senate could be raised. The Council does not have the independent authority to address the issue -- it needs to be asked for a ruling by the President, Prime Minister, or President of the National Assembly.

¶11. (C) Salem stated that the Constitutional Council has taken its distance from the HSC and the FNDD and has attempted to remain neutral. He noted that he had been invited by the Libyans to sit in on Qadhafi's three-hour meeting with political forces, but he had refused to voice an opinion. Salem affirmed that the Council is insulated from political pressure for the next year since there are no vacancies until 2010. He noted, however, that the regime can try to influence through their control of the Council's budget. At that point, Salem's Chief of Staff noted that salaries for the Council members was less than \$400 a month (so maybe that threat of turning off funding is not so effective).

¶12. (C) Charge asked who had the jurisdiction to rule on whether General Aziz was eligible to be a candidate in view of Mauritania's ratification of the Africa Charter. Salem said the competence rested with the Council and quickly added, "And you know, ANY candidate can file a challenge to another candidate's eligibility within 48 hours of the close of the filling process." Salem seemed to be inviting such a challenge.

COMMENT

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¶13. (C) It remains unclear how exactly General Aziz plans to step down. While we have no doubt he will maintain effective control through his intermediaries even as he assumes the public persona of "just a regular citizen," his transition strategy still tries to create a veneer of legitimacy. By trying to force the square peg of a coup d'etat into the round hole of constitutional legitimacy, Aziz is allowing himself a period of vulnerability following his resignation. The President of the Senate seems prepared to play along -- from his perspective, perhaps, trying to extricate Mauritania from an untenable position even if the outcome is less than ideal. There are two legal issues involving the Constitutional Council that could derail Aziz' plans -- whether there is a vacancy in the presidency that would allow the President of the Senate to assume interim control and whether, as a coup leader, General Aziz is precluded from being a candidate under the provisions of the Africa Charter as ratified by Mauritania. The constitutional questions may never come up either because Aziz changes the gameplan at the last minute or because nobody refers them to the Council. The Council itself has shown itself ready to rule against Aziz in the past, but it is hard to predict if anyone will stand up to the pressure one can assume will be applied if the Council is asked to give a constitutional stamp on Aziz' plans. Were the Council to rule against Aziz the likely outcome would not be the return of Abhallahi but a second Aziz coup that would no longer try to package itself as defending the constitution.
HANKINS